

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PHOENIX LICENSING, L.L.C., an Arizona
Limited Liability Company, and LPL
LICENSING, L.L.C., a Delaware Limited
Liability Company;

Plaintiffs,

vs.

CHASE MANHATTAN MORTGAGE
CORPORATION, a New Jersey corporation; JP
MORGAN CHASE BANK, N.A., a Delaware
corporation; CITIBANK, N.A., a national bank
association; CITIBANK USA, N. A., a limited
purpose credit card bank; CITIBANK (SOUTH
DAKOTA), N. A., a limited purpose credit card
bank; CITIMORTGAGE, INC., a New York
corporation; CITIGROUP, INC. a Delaware
corporation; CITI ASSURANCE SERVICES,
INC., a Maryland corporation; CITICORP
CREDIT SERVICES, INC., a Delaware
corporation, COUNTRYWIDE HOME LOANS,
INC., a New York corporation; COUNTRYWIDE
INSURANCE SERVICES, INC., a California
corporation; DISCOVER FINANCIAL
SERVICES,, a Delaware corporation; DISCOVER
BANK, a Delaware corporation; DFS SERVICES
L.L.C., a Delaware corporation; DISCOVER
PRODUCTS, INC, a Utah corporation; GMAC
Mortgage, L.L.C. (f/k/a GMAC Mortgage
Corporation), a Delaware corporation; GMAC
INSURANCE MARKETING, INC., a Missouri
corporation; GMAC BANK, a Utah industrial loan
corporation; LIBERTY LIFE INSURANCE
COMPANY, a South Carolina corporation;
RESPONSE WORLDWIDE INSURANCE
COMPANY, an Ohio corporation; DIRECT
RESPONSE CORPORATION, a Delaware
corporation; WARNER INSURANCE
COMPANY, a Illinois corporation; STATE
FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY, a Illinois corporation; STATE

CASE NO. 2:07-cv-387 (TJW/CE)

Jury Trial Demanded

FARM BANK, F.S.B., a Federal Savings Association; USAA Federal Savings Bank, a FEDERAL SAVINGS BANK; USAA SAVINGS BANK, a Nevada corporation; UNITED SERVICES AUTOMOBILE ASSOCIATION, a reciprocal inter insurance exchange.

Defendants.

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Phoenix Licensing, L.L.C. (“Phoenix”) and LPL Licensing, L.L.C. (“LPL”) sue Chase Manhattan Mortgage Corporation, JP Morgan Chase Bank, N.A., Citibank, N.A., Citibank USA, N.A., Citibank (South Dakota), N. A., Citimortgage, Inc., Citigroup, Inc., Citi Assurance Services, Inc., Citicorp Credit Services, Inc., Countrywide Home Loans, Inc., Countrywide Insurance Services, Inc., Discover Financial Services, Discover Bank, DFS Services, L.L.C., Discover Products, Inc., GMAC Mortgage, L.L.C. (f/k/a GMAC Mortgage Corporation), GMAC Insurance Marketing, Inc., GMAC Bank, Liberty Life Insurance Company, Response Worldwide Insurance Company, Direct Response Corporation, Warner Insurance Company, State Farm Mutual Automobile Insurance Company, State Farm Bank, F.S.B., USAA Federal Savings Bank, USAA Savings Bank, and United Services Automobile Association (collectively “Defendants”) and, on information and belief, allege as follows:

Introduction

1. Plaintiff Phoenix owns the invention described and claimed in United States Patent Nos.:

- (a) 5,987,434 entitled “Apparatus and Method for Transacting Marketing and Sales of Financial Products” (the “434 patent”);
- (b) 6,076,072 entitled “Method and Apparatus For Preparing Client Communications Involving Financial Products and Services” (the “072

patent”); and

(c) 6,999,938 entitled “Automated Reply Generation Direct Marketing System”
(the “‘938 patent”);

(collectively the “Patents”). Pursuant to a license agreement dated December 1, 2006, Plaintiff LPL is the exclusive licensee of the Patents. Defendants (a) have used, and continue to use, Plaintiff Phoenix’s patented technology in products and services that they make, use, import, sell, and offer to sell, without Plaintiffs’ permission; and (b) have contributed to or induced, and continue to contribute to or induce, others to infringe the Patents. Plaintiffs seek damages for patent infringement and an injunction preventing Defendants from making, using, selling, or offering to sell, and from contributing to and inducing others to make, use, sell, or offer to sell, the technology claimed by the Patent without Plaintiffs’ permission.

Jurisdiction and Venue

2. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, *et seq.* The Court has original jurisdiction over this patent infringement action under 28 U.S.C. § 1338(a).

3. Within this judicial district each of the Defendants has committed acts and continues to commit acts that give rise to this action, including making sales of infringing products and offering for sale infringing products. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and § 1400.

Plaintiffs Phoenix and LPL

4. Phoenix Licensing, L.L.C. is an Arizona limited liability company having a principal place of business in Scottsdale, Arizona.

5. LPL Licensing, L.L.C. is a Delaware limited liability company having a principal place of business in Scottsdale, Arizona.

Defendants

Chase

6. Upon information and belief, Chase Manhattan Mortgage Corporation is a New Jersey corporation having its principal place of business in Edison, New Jersey (“Chase Manhattan”).

7. Upon information and belief, JP Morgan Chase Bank, N. A., is a Delaware corporation having its principal place of business in New York, New York (“JP Morgan Chase”).

Citibank

8. Upon information and belief, Citibank N.A. is a national bank association having its principal place of business in New York, New York (“Citibank NA”).

9. Upon information and belief, Citibank USA, National Association (Citibank USA) is a national bank association having its principal place of business in Sioux Falls, South Dakota (“Citibank”).

10. Upon information and belief, Citibank (South Dakota), N.A., is a national bank association having its principal place of business in Sioux Falls, South Dakota (“Citibank SD”).

11. Upon information and belief, Citimortgage, Inc. is a New York corporation having its principal place of business in St. Louis, Missouri (“Citimortgage”).

12. Upon information and belief, Citigroup, Inc. is a Delaware corporation having its principal place of business in New York, New York (“Citigroup”).

13. Upon information and belief, Citi Assurance Services, Inc., is a Maryland corporation having its principal place of business in Fort Worth, Texas (“Citi Assurance”).

14. Upon information and belief, Citicorp Credit Services, Inc. is a Delaware

corporation having its principal place of business in Long Island City, New York (“Citicorp”). On October 17, 2007 Citicorp filed a complaint for Declaratory Judgment, alleging that the three Patents are invalid and that Citicorp does not infringe any valid claims of the Patents (the “Citicorp Complaint”). In the Citicorp Complaint, the only basis that Citicorp provides to support its declaratory relief claims are the allegations in the present case:

“On August 31, 2007, [Phoenix and LPL] filed Case No. 2-07cv-387 in the United States District Court for the Eastern District of Texas, Marshall Division, accusing 22 companies in the financial products and services industry, including certain affiliates of [Citicorp] of patent infringement with respect to the patents-in-suit. In light of those allegations, [Citicorp] believes that a controversy also exists between it and [Phoenix and LPL] over whether [Citicorp’s] business practices have infringed, and are continuing to infringe, the patents-in-suit and whether the patents-in-suit are valid. This controversy is continuing and ongoing, and is ripe for resolution by the Court.”

Citicorp Complaint at 10-11. Plaintiffs have requested additional information from Citicorp but Citicorp has refused to provide any additional information regarding the bases for its claims. Accordingly, Plaintiffs’ allegations against Citicorp in this Amended Complaint are solely based on the Citicorp Complaint.

Countrywide

15. Upon information and belief, Countrywide Home Loans, Inc. is a New York corporation having its principal place of business in Calabasas, California (“Countrywide”).

16. Upon information and belief, Countrywide Insurance Services, Inc. is a California corporation having its principal place of business in Calabasas, California (“Countrywide Insurance”).

Discover

17. Upon information and belief, Discover Financial Services is a Delaware corporation having its principal place of business in Riverwoods, Illinois (“Discover”).

18. Upon information and belief, Discover Bank is a Delaware corporation having its principal place of business in New Castle, Delaware (“Discover Bank”).

19. Upon information and belief, DFS Services L.L.C., (the successor in interest to Discover Financial Services, Inc.) is a Delaware corporation having its principal place of business in Riverwoods, Illinois (“DFS”).

20. Upon information and belief, Discover Products, Inc. (“Discover Products”) is a wholly owned subsidiary of Discover Bank, and is a Utah corporation with its principal place of business in Riverwoods, Illinois. On October 11, 2007 Discover Products filed a complaint for Declaratory Judgment, alleging that the three Patents are invalid and that Discover Products does not infringe any valid claims of the Patent (“Discover Products Complaint”). Plaintiff’s allegations against Discover Products in this Amended Complaint are solely based on the Discover Products Complaint.

GMAC

21. Upon information and belief, GMAC Mortgage, L.L.C. is a Delaware limited liability corporation having its principal place of business in Horsham, Pennsylvania (“GMAC Mortgage”).

22. Upon information and belief, GMAC Insurance Marketing, Inc. is a Missouri corporation having its principal place of business in Maryland Heights, Missouri (“GMAC Insurance”).

23. Upon information and belief, GMAC Bank is a Utah industrial loan corporation having its principal place of business in Horsham, Pennsylvania (“GMAC Bank.”).

Liberty Life

24. Upon information and belief, Liberty Life Insurance Company is a South Carolina corporation doing business as RBC Insurance Company having its principal place of business in Greenville, South Carolina (“Liberty Life”).

Response Worldwide

25. Upon information and belief, Response Worldwide Insurance Company is an Ohio corporation having its principal place of business in Meriden, Connecticut (“Response Worldwide”).

26. Upon information and belief, Direct Response Corporation, doing business as Response Group, is a Delaware corporation having its principal place of business in 500 Meriden, Connecticut (“Direct Response”).

27. Upon information and belief, Warner Insurance Company is an Illinois corporation having its principal place of business in Meriden, Connecticut (“Warner”).

State Farm

28. Upon information and belief, State Farm Mutual Automobile Insurance Company is an Illinois corporation having its principal place of business in Bloomington, Illinois (“State Farm”).

29. Upon information and belief, State Farm Bank, F.S.B, is a federal savings association chartered under the Home Owner's Loan Act (12 U.S.C. § 1461 et seq.), having its principal place of business in Bloomington, Illinois ("State Farm Bank").

USAA Bank

30. Upon information and belief, USAA Federal Savings Bank is a federal savings bank having its principal place of business in San Antonio, Texas ("USAA Bank").

31. Upon information and belief, USAA Savings Bank is a Nevada corporation having its principal place of business in Las Vegas, Nevada ("USAA Savings").

32. Upon information and belief, USAA is a reciprocal inter insurance exchange organized and existing under the laws of Texas with its principal place of business in San Antonio, Texas ("USAA"). On October 17, 2007 USAA filed a complaint for Declaratory Judgment, alleging that the three Patents are invalid and that USAA does not infringe any valid claims of the Patent ("USAA Complaint"). Plaintiff's allegations against USAA in this Amended Complaint are solely based on the USAA Complaint.

First Claim for Patent Infringement
(infringement of the '434 patent)

33. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 28 above and further allege as follows:

34. The United States Patent and Trademark Office issued the '434 patent on November 16, 1999. Attached as Exhibit A is what is believed to be a copy of the text of the '434 patent. Through assignment, Plaintiff Phoenix is the owner of all right, title, and interest in the '434 patent, including all rights to pursue and collect damages for past infringements of the patent.

35. Defendants Chase Manhattan, Citibank, Citibank SD, Citimortgage, Citicorp, Discover, Discover Bank, Discover Products, DFS, GMAC Mortgage, Liberty Life, Response Worldwide, Direct Response, Warner, State Farm, State Farm Bank, USAA Bank, USAA Savings, and USAA have infringed, contributed to the infringement, and induced others to infringe the '434 patent and, unless enjoined, will continue to do so, by manufacturing, importing, using, selling, or offering for sale products and services that infringe the claims of the '434 patent and by contributing to or inducing others to infringe the claims of the '434 patent without a license or permission from Plaintiffs.

36. Plaintiffs have been damaged by Defendants' infringement of the '434 patent and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendants are enjoined from continuing to infringe the '434 patent.

37. The Defendants are and have been willfully infringing one or more claims of the '434 patent.

38. Plaintiffs are entitled to recover damages from the Defendants to compensate them for the infringement.

Second Claim for Patent Infringement
(infringement of the '072 patent)

39. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 28 above and further allege as follows:

40. The United States Patent and Trademark Office issued the '072 patent on June 13, 2000. Attached as Exhibit B is what is believed to be a copy of the text of the '072 patent. Through assignment, Plaintiff Phoenix the owner of all right, title, and interest in the

'072 patent, including all rights to pursue and collect damages for past infringements of the patent.

41. Defendants Chase Manhattan, Citimortgage, Citigroup, Citicorp, Countrywide, Discover, Discover Bank, Discover Products, DFS, GMAC Mortgage, Liberty Life, and USAA have infringed, contributed to the infringement, and induced others to infringe the '072 patent and, unless enjoined, will continue to do so, by manufacturing, importing, using, selling, or offering for sale products and services that infringe the claims of the '072 patent and by contributing to or inducing others to infringe the claims of the '072 patent without a license or permission from Plaintiffs.

42. Plaintiff has been damaged by Defendants' infringement of the '072 patent and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendants are enjoined from continuing to infringe the '072 patent.

43. The Defendants are and have been willfully infringing one or more claims of the '072 patent.

44. Plaintiffs are entitled to recover damages from the Defendants to compensate them for the infringement.

Third Claim for Patent Infringement
(infringement of the '938 patent)

45. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 28 above and further alleges as follows:

46. The United States Patent and Trademark Office issued the '938 patent on February 14, 2006. Attached as Exhibit C is what is believed to be a copy of the text of the '938 patent. Through assignment, Plaintiff Phoenix is the owner of all right, title, and interest in the

‘938 patent, including all rights to pursue and collect damages for past infringements of the patent.

47. Defendants JP Morgan Chase, Citibank NA, Citibank SD, Citimortgage, Citi Assurance, Citicorp, Countrywide Insurance, Discover, Discover Bank, Discover Products, DFS, GMAC Insurance, GMAC Bank, GMAC Mortgage, Liberty Life, Response Worldwide, Direct Response, Warner, State Farm, State Farm Bank, USAA Bank, USAA Savings, and USAA have infringed, contributed to the infringement, and induced others to infringe the ‘938 patent and, unless enjoined, will continue to do so, by manufacturing, importing, using, selling, or offering for sale products and services that infringe the claims of the ‘938 patent and by contributing to or inducing others to infringe the claims of the ‘938 patent without a license or permission from Plaintiffs.

48. Plaintiffs have been damaged by Defendants’ infringement of the ‘938 patent and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendants are enjoined from continuing to infringe the ‘938 patent.

49. The Defendants are and have been willfully infringing one or more claims of the ‘938 patent.

50. Plaintiffs are entitled to recover damages from the Defendants to compensate them for the infringement.

51. Plaintiffs demand trial by jury of all issues relating to all claims.

WHEREFORE, Plaintiffs prays for judgment as follows:

- A. A decree preliminarily and permanently enjoining Defendants, their officers, directors, employees, agents, and all persons in active concert with them, from infringing, and contributing to or inducing others to infringe, the '434, '072, and '938 Patents;
- B. Compensatory damages for Defendants' infringement of the '434, '072, and '938 Patents;
- C. Treble the compensatory damages as consequence of Defendants' willful infringement;
- D. Costs of suit and attorneys' fees on the basis that this patent infringement case is exceptional;
- E. Pre-judgment interest; and
- F. For such other relief as justice requires.

Date: November 9, 2007

Respectfully Submitted,

/s/ Elizabeth L. DeRieux

S. Calvin Capshaw

State Bar No. 03783900

Elizabeth L. DeRieux

State Bar No. 05770585

Brown McCarroll LLP

1127 Judson Road, Suite 220

P.O. Box 3999

Longview, Texas 75601-5157

Telephone: (903) 236-9800

Facsimile: (903) 236-8787

E-mail: ccapshaw@mailbmc.com

E-mail: ederieux@mailbmc.com

Charles Ainsworth

State Bar No. 00783521

Robert Christopher Bunt

State Bar No. 00787165

Robert M. Parker

State Bar No. 15498000

Parker, Bunt & Ainsworth

100 E. Ferguson, Suite 1114

Tyler, Texas 75702

Telephone: (903) 531-3535

Facsimile: (903) 533-9687

E-mail: charley@pbatyler.com

E-mail: rcbunt@pbatyler.com

E-mail: rmparker@pbatyler.com

	<p>Gregory Scott Dovel CA State Bar No. 135387 Sean A. Luner CA State Bar No. 165443 Dovel & Luner, LLP 201 Santa Monica Blvd., Suite 600 Santa Monica, CA 90401 Telephone: (310) 656-7066 Facsimile: (310) 656-7069 E-mail: greg@dovellaw.com E-mail: sean@dovellaw.com</p> <p>ATTORNEYS FOR PLAINTIFFS PHOENIX LICENSING, L.L.C. and LPL LICENSING, L.L.C.</p>
--	--

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served this 9th day of November, 2007, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Elizabeth L. DeRieux
Elizabeth L. DeRieux